

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

Howard Hirsch

(b) County of Residence of First Listed Plaintiff Chester  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Gallagher Law Group, PC, 171 W. Lancaster Ave., Paoli, PA 19301  
610-647-5027

**DEFENDANTS**

Keystone Custom Homes, Inc., et al.

County of Residence of First Listed Defendant Lancaster

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION**

1 U.S. Government Plaintiff  
 2 U.S. Government Defendant  
 3 Federal Question (U.S. Government Not a Party)  
 4 Diversity  
(Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	<input checked="" type="checkbox"/> PTF	<input type="checkbox"/> DEF	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> PTF	<input checked="" type="checkbox"/> DEF
Citizen of Another State	<input type="checkbox"/> PTF	<input checked="" type="checkbox"/> DEF	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> PTF	<input checked="" type="checkbox"/> DEF
Citizen or Subject of a Foreign Country	<input type="checkbox"/> PTF	<input checked="" type="checkbox"/> DEF	Foreign Nation	<input type="checkbox"/> PTF	<input checked="" type="checkbox"/> DEF

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<b>PERSONAL INJURY</b>	<b>PERSONAL INJURY</b>	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 430 Commerce	
<input checked="" type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 460 Deportation	
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 480 Consumer Credit	
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 490 Cable/Sat TV	
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 390 Other	<input type="checkbox"/> 510 Selective Service	
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 850 Securities/Commodities/ Exchange	
<input type="checkbox"/> 193 Contract Product Liability		<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 890 Other Statutory Actions	
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>LABOR</b>	<b>SOCIAL SECURITY</b>	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 861 HIA (1955f)	
<input type="checkbox"/> 220 Foreclosure	<input checked="" type="checkbox"/> 442 Employment	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 862 Black Lung (923)	
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 863 DJWC/DIWW (405(g))	
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 865 RSI (405(g))	
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 866 Title VII	<b>FEDERAL TAX SUITS</b>	
<input checked="" type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	
		<b>IMMIGRATION</b>		
		<input type="checkbox"/> 462 Naturalization Application		
		<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee		
		<input type="checkbox"/> 465 Other Immigration Actions		

**V. ORIGIN**

(Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from another district (specify)

6 Multidistrict Litigation

Appeal to District Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): U.S.C.A. §§ 621, et seq.Brief description of cause:  
Age Discrimination in Employment Act**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ 150,000.00

CHECK YES only if demanded in complaint:  
**JURY DEMAND:**  Yes  No**VIII. RELATED CASE(S) IF ANY**

(See instructions)

JUDGE

DOCKET NUMBER

DATE

09/28/2010

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #                  AMOUNT                  APPLYING IJP                 

JUDGE

*Sept 18 2010*  
REG. JUDGE

## UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment  
to appropriate calendar.

5:10-CV-5492

Address of Plaintiff: 320 Sidley Road, Malvern, PA 19355

10 5492

Address of Defendant: 227 Granite Run Drive, Suite 100, Lancaster, PA 17601Place of Accident, Incident or Transaction: Lancaster, PA(Use Reverse Side For  
Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes  No 

Does this case involve multidistrict litigation possibilities?

RELATED CASE, IF ANY:

Case Number: N/A

Date Terminated:

Yes  No 

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?

Yes  No 

2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?

Yes  No 

3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?

Yes  No 

4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?

Yes  No CIVIL: (Place in ONE CATEGORY ONLY)

## A. Federal Question Cases:

1.  Indemnity Contract, Marine Contract, and All Other Contracts
2.  FELA
3.  Jones Act-Personal Injury
4.  Antitrust
5.  Patent
6.  Labor-Management Relations
7.  Civil Rights
8.  Habeas Corpus
9.  Securities Act(s) Cases
10.  Social Security Review Cases
11.  All other Federal Question Cases  
(Please specify)

## B. Diversity Jurisdiction Cases:

1.  Insurance Contract and Other Contracts
2.  Airplane Personal Injury
3.  Assault, Defamation
4.  Marine Personal Injury
5.  Motor Vehicle Personal Injury
6.  Other Personal Injury (Please specify)
7.  Products Liability
8.  Products Liability — Asbestos
9.  All other Diversity Cases

(Please specify)

CGA 10/18/10

ARBITRATION CERTIFICATION

(Check Appropriate Check Box)

I, John A. Gallagher, Case 5:10-cv-05492-JS Document 1 Filed 10/18/10 Page 3 of 11

, counsel of record do hereby certify:

Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

Relief other than monetary damages is sought.

DATE: September 28, 2010

John A. Gallagher

Attorney-at-Law

61914

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: September 28, 2010

John A. Gallagher

Attorney-at-Law

61914

Attorney I.D.#

CIV. 609 (6/08)

JS

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**CASE MANAGEMENT TRACK DESIGNATION FORM**

HOWARD HIRSCH

Plaintiff

: Civil Action No.:

v.

KEYSTONE CUSTOM HOMES, INC. *et al.*

: JURY TRIAL DEMANDED

Defendants

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. §2241 through §2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( )
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (x)

**Date**

9/28/10

**Attorney-at-law**

John A. Gallagher

**Attorney for Plaintiff****Telephone**

610-647-5027

**FAX Number**

610-647-5024

**E-Mail Address**

jag@johnagallagher.com

4350  
JSIN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HOWARD HIRSCH

Plaintiff	:	CIVIL ACTION NO.:
v.	:	<i>10/18/10</i>
		JURY TRIAL DEMANDED
Defendants	:	

**COMPLAINT**

**FILED**  
**OCT 18 2010**  
*MICHAEL E. KUNZ, Clerk*  
*By [Signature] Dep. Clerk*

Plaintiff, Mr. Howard Hirsch, by and through his undersigned counsel, the Gallagher Law Group, P.C., files this Complaint against defendants, Keystone Custom Homes Inc., and KCH Holding, Inc., and in support thereof avers as follows:

**PARTIES**

1. Plaintiff, Mr. Howard Hirsch, DOB 10/2/57, is an adult individual and resident of the Commonwealth of Pennsylvania who currently resides at 320 Sidley Road, Malvern, PA 19355.

2. Defendant Keystone Custom Homes, Inc. ("Keystone") is a corporation believed to be organized and/or existing pursuant to the laws of the Commonwealth of Pennsylvania with a principal place of business at 227 Granite Run Drive, Suite 100, Lancaster, PA 17601.

3. Defendant KCH Holding, Inc. ("KCH") is a corporation believed to be organized and/or existing pursuant to the laws of the Commonwealth of Pennsylvania

with a principal place of business at 227 Granite Run Drive, Suite 100, Lancaster, PA 17601

4. KCH is the owner and/or principal and/or controlling partner of Keystone, and/or the true and/or joint employer of plaintiff along with Keystone. Keystone and KCH will be referred to jointly as "Keystone" in this Complaint.

5. Larry Wisdom and Jeffrey Rutt are adult individuals and, upon information and belief, residents of the Commonwealth of Pennsylvania.

6. At all times material hereto, Messrs. Wisdom and Rutt were employed in senior management positions with Keystone.

7. Messrs. Wisdom and Rutt participated in the decision to withhold accrued vacation pay to which plaintiff was entitled, and therefore are individually liable under Pennsylvania's Wage Payment and Collection Law, 43 Pa.C.S. §260.1 *et seq.* ("WPCL").

#### **JURISDICTION AND VENUE**

8. The amount in controversy in this matter is in excess of the arbitration limits of this Court.

9. The Court has jurisdiction over this matter by its authority to hear cases arising under the laws of the United States, pursuant to 28 U.S.C. §1331. This civil action arises under the Constitution and laws of the United States. Plaintiff is alleging a violation of his rights under The Age Discrimination Employment Act of 1967, 29 U.S.C.A. §§ 621, *et seq.*

10. The Court has jurisdiction over the state law claim set forth herein pursuant to 28 U.S.C. §1337(a), as such claim is closely related to the claim in the action within the Court's original jurisdiction.

11. Venue is proper in the Eastern District of Pennsylvania pursuant to 28 U.S.C. §1339(b), as a substantial part of the events giving rise to the claims occurred in the Eastern District of Pennsylvania.

### FACTS

12. Mr. Hirsch was hired by Keystone as the Director of Finance in October 2002.

13. During all material times hereto, Mr. Hirsch was an exemplary employee of Keystone.

14. Indeed, Mr. Hirsch received a number of commendations, promotions and additional, important responsibilities during his tenure with Keystone.

15. However, on March 8, 2010, Mr. Hirsch was terminated by Keystone without cause.

16. As set forth below, Mr. Hirsch believes, and therefore avers, that his termination was in whole or in part motivated by unlawful factors, to wit, Mr. Hirsch's age.

17. On or about June 9, 2010, Mr. Hirsch timely filed a Charge of Discrimination against Keystone with the Equal Employment Opportunity Commission ("EEOC Charge"), dual filing same with the Pennsylvania Human Relations Commission ("PHRC").

18. On or about June 22, 2010, Mr. Hirsch timely filed a Charge of Discrimination against KCH and the individual defendants with the EEOC, dual filing same with the PHRC.

19. More than sixty (60) days have passed since the filing of the EEOC/PHRC Charges against all defendants.

**COUNT I - HOWARD HIRSCH v. KEYSTONE CUSTOM HOMES, INC. and KCH HOLDING, INC.**

**Age Discrimination Pursuant to the Age Discrimination Employment Act,**  
**28 U.S.C. §§ 621, et seq. ("ADEA")**

20. Plaintiff hereby incorporates by reference all other paragraphs of his Complaint as though more fully set forth at length herein.

21. Mr. Hirsch was fifty-two years of age at the time of his termination, and thus falls within a protected class of persons under the ADEA.

22. Mr. Hirsch was told at the time of his termination that he was being fired because the company had discovered in April 2009 (roughly 11 months before his termination) that he had posted his resume on Monster.com.

23. Mr. Hirsch was terminated without reasonable basis or cause.

24. The reasons stated to Mr. Hirsch at the time of his termination were a mere pretext for the true reason for terminating Mr. Hirsch, his age.

25. In fact, prior to terminating Mr. Hirsch, and for reasons wholly-unrelated to the pretextual reasons stated at the time of his firing, Keystone had already hired Danford Batten to replace Mr. Hirsch.

26. Upon information and belief Mr. Batten was between 39 and 40 years of age at the time he was hired by Keystone.

27. Keystone's discriminatory philosophies, practices, policies, and conduct violated The Age Discrimination Employment Act, 28 U.S.C. §§ 621 *et seq.*

28. As a result of Keystone's discriminatory conduct, plaintiff has suffered great losses, including backpay and forward pay, liquidated damages equal to the amount

of his lost wages, loss of benefits, great emotional distress, as well as other damages that will be proved at trial in this matter.

WHEREFORE, Plaintiff, Howard Hirsch, hereby demands judgment in his favor and against defendants Keystone Custom Homes and KCH Holding, Inc., in a sufficient amount to fully compensate him for his losses, along with attorney fees, liquidated damages, costs and such other relief as Your Honorable Court deems just and appropriate.

**COUNT I - HOWARD HIRSCH v. KEYSTONE CUSTOM HOMES, INC. and  
KCH HOLDING, INC.**

Age Discrimination Pursuant to the Pennsylvania Human Relations Act,  
43 P.S. § 955(a), et seq. ("PHRA")

29. Plaintiff hereby incorporates by reference all other paragraphs of his Complaint as though more fully set forth at length herein.

30. Mr. Hirsch was fifty-two years of age at the time of his termination, and thus falls within a protected class of persons under the PHRA.

31. Mr. Hirsch was told at the time of his termination that he was being fired because the company had discovered in April 2009 (roughly 11 months before his termination) that he had posted his resume on Monster.com.

32. Mr. Hirsch was terminated without reasonable basis or cause.

33. The reasons stated to Mr. Hirsch at the time of his termination were a mere pretext for the true reason for terminating Mr. Hirsch, his age.

34. In fact, prior to terminating Mr. Hirsch, and for reasons wholly-unrelated to the pretextual reasons stated at the time of his firing, Keystone had already hired Danford Batten to replace Mr. Hirsch.

35. Upon information and belief Mr. Batten was between 39 and 40 years of age at the time he was offered employment by Keystone.

36. Keystone's discriminatory philosophies, practices, policies, and conduct violated PHRA.

37. As a result of Keystone's discriminatory conduct, plaintiff has suffered great losses, including backpay and forward pay, loss of benefits, great emotional distress, as well as other damages that will be proved at trial in this matter.

WHEREFORE, Plaintiff, Howard Hirsch, hereby demands judgment in his favor and against defendants Keystone Custom Homes and KCH Holding, Inc., in a sufficient amount to fully compensate him for his losses, along with attorney fees, costs and such other relief as Your Honorable Court deems just and appropriate.

**COUNT III – HOWARD HIRSCH v. KEYSTONE CUSTOM HOMES, KCH HOLDING, INC., LARRY WISDOM AND JEFFREY RUTT**  
Violation of the Pennsylvania Wage Payment and Collection Law

38. Plaintiff hereby incorporates by reference all other paragraphs of his Complaint as though more fully set forth at length herein.

39. During negotiations incident to his hiring, Mr. Hirsch and Keystone agreed that Mr. Hirsch could accrue unused vacation, and that any such accrued but unused vacation would be paid to him upon the cessation of his employment.

40. During his employment, Mr. Hirsch was always allotted three (3) weeks of vacation per annum.

41. During the roughly 7 ½ years of his employment with Keystone, Mr. Hirsch used approximately 1 week of vacation per annum.

42. Subsequent of his termination, Mr. Hirsch demanded his accrued, earned but unused vacation.

43. However, Keystone, acting by and through Messrs. Wisdom and Rutt, failed and refused to pay such accrued, earned and agreed upon vacation pay.

44. Keystone, and Messrs. Wisdom and Rutt particularly, knew Keystone was required to issue such vacation pay to Mr. Hirsch, but purposefully elected not to do so.

45. Mr. Hirsch is entitled to receive said vacation pay, along with attorney's fees, costs, liquidated damages equal to 25% of the amount of the unpaid vacation pay and all other relief appropriate under the WPCL.

WHEREFORE, Plaintiff, Howard Hirsch, hereby demands judgment in his favor and against defendant Keystone Custom Homes, Inc., KCH Holding, Inc., Larry Wisdom and Jeffrey Rutt in a sufficient amount to fully compensate him for his losses, along with attorney fees, liquidated damages, costs and such other relief as Your Honorable Court deems just and appropriate.

GALLAGHER LAW GROUP, P.C.

BY:

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